

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CURTIS OSWALT,

Plaintiff,

1

RESOLUTE INDUSTRIES INC.,

Defendant.

CASE NO. C08-1600 MJP

**ORDER ON MOTION TO ENFORCE
APPEAL BOND**

The Court, having received and reviewed:

1. Plaintiffs' Motion to Enforce Appeal Bond (Dkt. No. 89)
2. Resolute Industries, Inc. Opposition to Plaintiffs' Motion to Enforce Appeal Bond (Dkt. No. 94)
3. Plaintiffs' Reply to Defendants' Opposition to Motion to Enforce Appeal Bond (Dkt. No. 95)

22 || and all attached declarations and exhibits, makes the following ruling:

23 IT IS ORDERED that the motion is GRANTED. OneBeacon Insurance Company is
24 ordered to pay the judgment to Plaintiffs Curtis Oswalt and the Federal Insurance Company in

1 the amount of \$260,535.37, plus postjudgment interest at the rate of 0.34% per annum (\$2.43 per
2 day) from April 6, 2010 until the date paid.

3 **Background**

4 On April 6, 2010, following a bench trial, this Court entered judgment in favor of
5 Plaintiffs and against Defendant Resolute Industries, Inc. (“Resolute”) in the amount of
6 \$256,075.17, including prejudgment interest. Dkt. No. 80. Costs were taxed to the judgment on
7 April 7, 2010, in the amount of \$4,460.20 (Dkt. No. 81), bringing the judgment total to
8 \$260,535.37. Postjudgment interest was fixed at a rate of 0.34% per annum from the date of
9 entry until the date of payment. Dkt. No. 80.

10 Resolute appealed the judgment from the bench trial verdict, at the same time appealing
11 an order dismissing Third-Party Defendant Webasto Products NA, Inc. from the case on
12 Webasto’s motion for summary judgment. Dkt. No. 76.

13 In order to stay collection of the judgment pending appeal, Resolute posted a supersedeas
14 bond as security, evidence of which was filed with this Court. Dkt. No. 83. The Stipulation of
15 Bond provides, in relevant part:

- 16 1. A judgment was entered... against Appellant Resolute Industries, Inc. and in
17 favor of Curtis Oswalt and Federal Insurance Co.
- 18 2. Resolute Industries... desires to suspend enforcement of the judgment pending
determination of the appeal.

19 **PROMISE TO PAY**

20 Pursuant to FRCP 65.1, OneBeacon Insurance Company... promises to pay to
21 Curtis Oswalt and Federal Insurance Co. all damages, costs and interest that may
22 be awarded to them following the appeal of this matter up to the sum of
\$275,000.00 if:

- 23 a. The Judgment so appealed is Affirmed.
- b. The Appeal is dismissed.

1 Dkt. No. 83, p. 2.

2 On June 16, 2011, the Ninth Circuit Court of Appeals affirmed this Court's verdict
3 awarding judgment in favor of Plaintiffs and against Resolute. Dkt. No. 87. It affirmed the
4 Court's granting of summary judgment dismissing Webasto on all grounds except a design
5 defect claim, which the appellate court reversed and remanded back to this Court. Dkt. No. 87.

6 On July 12, 2011, the Ninth Circuit issued the mandate on its decision. Dkt. No. 88.

7 Plaintiffs represent that due demand has been made for payment of the judgment and that
8 Resolute has refused to pay. Accordingly, Plaintiffs have moved this Court for an order
9 directing payment of the judgment.

10 **Discussion**

11 Defendant Resolute premises its refusal to pay on two grounds: first, that the surety only
12 allows payment where the "Final Judgment" has been affirmed, but not in the circumstance
13 where the Final Judgment has been vacated in part; and second, that the possibility exists (with
14 the reinstatement of Third-Party Defendant Webasto into the case) that Resolute may ultimately
15 be found partially or completely faultless and that it would be "unseemly" to force them to pay
16 the entire judgment at this juncture. Def. Opposition, pp. 1-2.

17 The Court is persuaded by neither of these arguments. First, the plain language of the
18 bond clearly indicates that it concerned the "judgment... against Appellant Resolute Industries,
19 Inc. and in favor of Curtis Oswalt and Federal Insurance Co.," and that the judgment award
20 would be paid when "*[t]he Judgment so appealed* is Affirmed." Dkt. No. 83 (emphasis
21 supplied). "The judgment so appealed" has been affirmed and the surety's obligation to pay has
22 been triggered. There was no bond posted to secure Resolute's appeal from the dismissal of

1 Webasto, and the language and effect of the OneBeacon Insurance Company bond has nothing to
2 do with the results of the appeal of the Webasto dismissal.

3 The absence of a “Final Judgment” in this case is irrelevant to Resolute’s obligation
4 under the bond, and its citation to FRCP 54(b) is inapposite – that rule has nothing to do with the
5 enforcement of a judgment that has already been entered and affirmed on appeal. Liability in
6 admiralty claims is joint and several (Edmonds v. Compagnie Generale Transatlantique, 443,
7 U.S. 256 (1979)), so Plaintiffs are entitled to collect the whole of their judgment against Resolute
8 even if it eventually recovers contribution against Webasto.

9 The factors enumerated in MCI Constructors, LLC v. City of Greensboro, 610 F.3d 849
10 (4th Cir. 2010) are useful here:

- 11 a. The claims already adjudicated have no binding or preclusive effect on the litigation
12 of Resolute’s remaining claims.
- 13 b. This Court will not need to consider issues relating to the judgment which Plaintiffs
14 seek to enforce during any further litigation in this matter.
- 15 c. There is no pending claim or counterclaim which would act as a set-off against the
16 judgment which has now been made final against Resolute by the appellate court.
- 17 d. No miscellaneous factors have been brought forth (e.g., delay, economic or solvency
18 considerations, frivolity of competing claims, expense) which would weigh in favor
19 of staying enforcement of the judgment.

20 Under those circumstances, the Fourth Circuit was not willing to stay the effect of the
21 trial court’s judgment, and neither is this Court.

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1 **Conclusion**

2 OneBeacon Insurance Company is ordered to pay the judgment issued by this Court to
3 Plaintiffs Curtis Oswalt and Federal Insurance Company in the amount of \$260,535.37, plus
4 postjudgment interest at the rate of 0.34% per annum (\$2.43 per day) from April 6, 2010 until the
5 date paid.

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7 The clerk is ordered to provide copies of this order to all counsel.

8 Dated August 11, 2011.

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12 Marsha J. Pechman
13 United States District Judge